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OFFICE OF PETITIONS

In re Patent No. 6,881,857	:
Palladino et al.	: DECISION ON REQUEST
Issue Date: April 19, 2005	: FOR
Application No. 10/068,333	: RECONSIDERATION OF
Filed: February 4, 2002	: PATENT TERM ADJUSTMENT
Attorney Docket No. NEREUS.012C1	: and
	: NOTICE OF INTENT TO ISSUE
	: CERTIFICATE OF CORRECTION
	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)," filed May 20, 2005. Patentees request that the patent term adjustment indicated in the patent be corrected from one hundred forty-three (143) days to two hundred thirteen (213) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated herein.**

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred twelve (212) days.

On April 19, 2005, the above-identified application matured into U.S. Patent No. 6,881,857. The instant request for reconsideration filed May 20, 2005, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 143 days. The initial determination of PTA of 213 was reduced by 1 day for

applicant delay in submitting the issue fee and 69 days for applicant's submission of an "Amendment under 37 CFR 1.312." Patentees dispute the reduction associated with the 312 amendment.

Preliminarily, it is noted that the reduction of 1 day is correct. The Notice of Allowance was mailed on November 9, 2004; however, the issue fee payment was not received in the Office until February 10, 2005. Accordingly, pursuant to § 1.704(b), a period of reduction of 1 day for the delay to February 10, 2005 was entered.

Regarding the reduction of 69 days, patentees cite section 2732 of the MPEP, which further explains:

The submission of the following papers after a 'Notice of Allowance' is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: ... (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the 'Notice of Allowance' or 'Notice of Allowability.'

Patentees contend that the paper submitted after notice of allowance was filed solely to correct the error in the examiner's amendment, which accompanied the Notice of Allowance. The examiner unilaterally changed the title of the application, but in doing so, made a typographical error.

Patentees' argument is well taken. A review of the record confirms that the paper was filed under the circumstances set forth by patentees. Thus, the reduction of 69 days was based on the filing of a request to correct an error in the Notice of Allowance. Thus, it is concluded that the reduction of 69 days is not warranted.

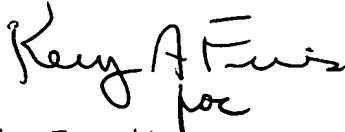
In view thereof, the patent term adjustment indicated in the patent should have been 212 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-

identified patent is extended or adjusted by two hundred twelve (212) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272 - 3219.

A handwritten signature in black ink, appearing to read "Karin Ferriter" with a stylized flourish at the end.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: DRAFT certificate of correction